

KENNETH C. ABSALOM (SBN 114607)
kenabsalom@333law.com
GEORGE R. NEMIROFF (SBN 262058)
nemiroff@333law.com
LAW OFFICE OF KENNETH C. ABSALOM
220 Montgomery Street, Suite 905
San Francisco, Ca. 94104
Tel: 415-392-5040
Fax: 415-392-3729

*Attorneys for Defendants
Carl Goff, Russell E. Burns, and
Dan Reding*

DWAYNE P. MCKENZIE (SBN 175162)
dmckenzie@coxcastle.com
COX, CASTLE & NICHOLSON LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067-3284
Telephone: (310) 284-2200
Facsimile: (310) 284-2100

*Attorneys for Defendants Kevin J. Albanese,
F.G. Crosthwaite, Thomas Holsman, John M.
Humber, Richard Piombo*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SLACK, individually, and on behalf
of all others similarly situated, *et al.*

Plaintiffs,

vs.

RUSSELL E. BURNS, *et al.*

Defendants.

Case No.: 3:13-cv-05001-EMC

**STIPULATION TO SET DEPOSITION
OF DEBBIE SHANK MORGAN AFTER
FACT DISCOVERY CUTOFF**

Judge: Hon. Edward M. Chen

Complaint Filed: October 27, 2013

TO THE COURT, TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

This Stipulation is submitted pursuant to Local Rules 6-2, and is entered into by and
between Plaintiffs David Slack, Jim Jarboe, Kenny Mendoza, Ken Bettis and Clyde Eli

(collectively, “Plaintiffs”), and Defendants Russell E. Burns, Carl Goff and Dan Reding (“Union Trustees”) and F.G. Crosthwaite, Richard Piombo, John Humber, Thomas Holsman and Kevin Albanese (“Management Trustees”) (collectively, “Defendants”) for the purpose of efficiently managing this litigation. One extension has previously been requested regarding the expert report disclosure deadline and it was granted. The original Complaint in this matter was filed on October 27, 2013.

1. On October 19, 2015, Defendants filed with this Court a Motion Seeking Leave to Depose Debbie Shank Morgan pursuant to Fed.R.Civ.P. 30(a)(2)(B).¹ (ECF No. 235).

2. On October 21, 2015, Plaintiffs filed a Procedural Objection to Defendant’s Motion Seeking Leave to Depose Debbie Shank Morgan, Filed in Violation of This Court’s Civil Standing Order on Discovery. (ECF No. 237).

3. On October 22, 2015, Defendants filed a Response to Plaintiff’s Procedural Objection. (ECF No. 239).

4. On October 22, 2015, the parties received a Clerk’s Notice referring the parties to the Court’s standing order regarding discovery disputes and required them to meet and confer and file a joint letter by November 5, 2015. (ECF No. 240).

5. The parties met and conferred in accordance with the Court’s direction and, when they determined no resolution could be reached, filed a joint letter on November 5, 2016 laying out their respective positions. (ECF No. 244).

6. On November 9, 2015, the Court issued its order referring the case to Magistrate Judge Kandis Westmore for discovery purposes. (ECF No. 245).

7. On November 24, 2015, Magistrate Judge Westmore issued an order granting Defendants leave to conduct the deposition of Debbie Shank Morgan. (ECF NO. 248).

8. On December 7, 2015, Defendants had prepared and served on Debbie Shank Morgan in Ohio a subpoena duces tecum commanding her to appear at deposition and produce documents on February 3, 2016.

¹ At the time the motion was filed Morgan was incarcerated in a federal penitentiary in Carswell, Texas.

1 9. On or about January 27, 2016, counsel for the Union Trustees received
2 correspondence from Morgan's attorney, Lawrence Hupertz, that Morgan was undergoing various
3 surgeries, one of which was scheduled for the day of her deposition and would not be able to
4 appear at the scheduled time, nor in the foreseeable future.

5 10. On February 9, 2016, counsel for the Union Trustees sent correspondence to
6 Magistrate Judge Westmore seeking her assistance in coordinating Morgan's deposition. (ECF No.
7 249).

8 11. On February 17, 2016, Magistrate Judge Westmore conducted a teleconference
9 involving counsel for both parties and Morgan. The conference concluded with Magistrate Judge
10 Westmore informing the parties she would make inquiries with Morgan's home confinement
11 specialist, Kenneth Dodds, as to the extent that her health condition would prevent her from being
12 able to sit for deposition. Magistrate Judge Westmore also indicated she would request Morgan's
13 physician(s) furnish an affidavit or letter regarding her health condition following her surgery.
14 (ECF No. 251).

15 12. On March 16, 2016, having not heard back from the Court, Defendants sent
16 additional correspondence to Magistrate Judge Westmore, seeking an update as to Morgan's
17 deposition. (ECF No. 252).

18 13. On March 29, 2016, Magistrate Judge Westmore conducted a teleconference
19 involving counsel for both parties and third party witness Morgan. Magistrate Judge Westmore
20 informed the parties of her findings. Further, she proposed dates for the parties to confer about after
21 the fact-discovery cut off and recommended the parties submit a stipulation to the Court to conduct
22 the deposition after said cutoff.

23 14. Counsel for the parties agreed to enter into a stipulation setting May 23, 2016 as the
24 date counsel for all parties to this action are available for taking Morgan's deposition. Counsel for
25 Morgan informed the Court that he was not authorized to enter into any stipulation. Thus, it is
26 unclear whether Morgan will in fact appear for her deposition on this re-noticed date.
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1 Dated: April 5, 2016

LAW OFFICE OF KENNETH C. ABSALOM

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3 By: /s/ Kenneth C. Absalom

4 Kenneth C. Absalom
George R. Nemiroff

5 Attorney for Defendants Russell E. Burns, Dan
6 Reding, and Carl Goff

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8
9 Dated: April 5, 2016

COX CASTLE & NICHOLSON

10
11 By: /s/ Dwayne McKenzie

12 Dwayne McKenzie
13 Monica Briseno

14 Attorney for Defendants F.G. Crosthwaite, Rich
15 Piombo, Thomas Holsman, John Humber and Kevin
16 Albanese

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: 4/7/16

Hon.
UNITED STATES

